



Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Re: IB Docket No. 95-59 and CS Docket No. 96-83

Dear Commissioners:

Georgetown Village Condominium ("Georgetown Village") wishes to express its concern with the potential, yet likely, adverse impact of the proposed rules affecting the placement on common areas of community associations of antennas designed to receive direct broadcast satellite service ("DBSS"), video programming services via multipoint distribution services, including multichannel multipoint distribution services ("MMDS"), or other television broadcast signals ("TVBS"). The placement of DBSS, MMDS, TVBS, and similar antenna devices on common areas of condominiums such as Georgetown Village *will* increase the legal risks and liability of the association far beyond reasonable insurance limits, as well as the operational costs for physically maintaining these areas far beyond any level of reasonably acceptable costs to our homeowners.

Georgetown Village is a 304-unit garden-style apartment condominium association, in North Bethesda, Maryland. Homes are located in nineteen, four-story buildings, sitting on twenty-two acres in an expansive, park-like setting, with large areas of open green-space. Buildings have pitched-style, asphalt-shingle roofs, each having sixteen homes, four per floor, with four units located at ground/terrace level. All homes have balconies or terrace patios.

Georgetown Village was established in 1985, like many condominiums, pursuant to a formal Declaration -- the legal equivalent of our constitution -- which delineates our "common elements" as "all of the Property other than Units", including *both* common elements *and* limited common elements". Common elements comprise all property, other than individual units, such as building exterior areas, roofs, corridors and stairways, and all other elements of common use necessary to their existence, upkeep and/or safety, as well as limited common elements -- those reserved for the *exclusive use* of the units to which they were designed and/or intended to serve and benefit. Our Declaration assigns to the individual unit owners who, collectively, comprise our "association", liability and responsibility for the duty of the care, operation and maintenance of the common elements. Material changes or amendments to our Declaration are extremely difficult to achieve: the Maryland Condominium Act, Maryland Real Property Article, § 11-103, requires approval of no less than 80% of the votes of the *entire* association membership (about 240 votes) *and* 51% of the first mortgagees. Material changes include changes in the rights to the use of the common elements, as well as responsibility for their maintenance and repair.

Day-to-day governance of Georgetown Village is provided for in our Bylaws, the legal framework, a contract between unit owners and our association, that requires owners to comply with the Bylaws, Declaration, and all rules and regulations promulgated by our Board of Directors. The Bylaws provide for the collection of assessments from unit owners to pay for the association's common expenses, including maintaining, operating, repairing, or replacing common elements. They also outline restrictions on the use of individual units, in part to provide "for the protection of the values of the Units and the adjoining property owners", including prohibiting any action "in on, or to the

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Common Elements which will impair the structural integrity of the Condominium, or which would structurally change any building or improvements thereon"; installation of antennas which are visible from the exterior of any unit; and the placement of anything on any balcony, patio, or any other portion of the common elements, except with the consent of the Board of Directors. Our Bylaws also prohibit owners from installing, erecting, attaching, applying, pasting, hinging, screwing, nailing, building, altering, removing, or constructing fixtures, including aerials, antennas, radio and television broadcasting or receiving devices, as well as making any changes or alterations which would "materially increase the cost of operation or insuring the Condominium" without prior Board of Directors' approval. Changes or amendments to our Bylaws require an affirmative vote of no less than 66⅔% of our homeowners.

In view of the nature of the physical infrastructure of Georgetown Village, our association strongly opposes permitting residents and owners in community associations to place antennas designed to receive DBSS, MMDS, or other TVBS services on any type of common areas, without any ability by the association to regulate such installation with rules appropriate to the community's individual needs. The Georgetown Village condominium association legally is responsible for the physical well-being of our property. This obligation is not optional, but a legal requirement for which our Board of Directors has a fiduciary duty to all homeowners. Yet, if implementation of Section 207 of the Telecommunications Act of 1996 is extended to condominium communities such as Georgetown Village, we will be unable to fulfill our fiduciary duties to our homeowners simply because some may argue that our rules, regulations or restrictions unreasonably delay or prevent their televised broadcast reception. Extending implementation of Section 207 to apply to condominium common areas such as building roofs, will leave Georgetown Village helpless to control and oversee installation of fixtures which -- if done and maintained improperly -- threatens the safety and well-being of residents, threatens the physical infrastructure of our common property; and threatens the financial well-being of the owners.

In bad storms, poorly installed and maintained antennas and satellite dishes may become dislodged, or even fall from roofs, damaging property, and causing bodily injury. Such devices have fallen from the roofs of single family homes; imagine the damage when they fall from a four-story structure! In the event of such an accident, where a device owned by an individual, *but installed on common elements*, causes property damage or human injury, it is likely that Georgetown Village (or any similarly situated community association) would be held liable. Even if, ultimately, we are absolved of liability, we still would have to absorb -- as a common expense to the entire community -- the legal expenses involved in defending legal actions. Although it is noted that Paragraph 24 of Order 96-328 would permit safety regulations requiring adequate bolting or guying of antennas, there is no language which would permit the association to pass along *its* future costs to inspect and maintain the installation of others. Even if we were permitted to demand that individual owners provide annual certification that their antenna systems remain in compliance with safety requirements, the burden would fall on our association to enforce such regulations, although it is questionable whether we could assess fines against recalcitrant residents, or remove systems found to present a safety hazard.

Indeed, installation of antennas and satellite dishes by less than qualified professionals threatens to damage roofs and other portions of common elements to which such persons require access to reach roof areas. By virtue of our association's responsibility for the maintenance of our building roofs, damage to individual units from leaks and other damage also are the association's responsibility. Yet, pursuant to Paragraphs 17 and 18 of Order 96-328, residents can argue that requirements for prior community association approval, or other regulations unreasonably increase the cost of installation, maintenance or use of such reception devices and, therefore, prevent their access to broadcast signals -- which are not permitted. Thus, any attempt by Georgetown Village to implement engineering installation guidelines, and minimal standards designed to prevent such accidents, would be prohibited, notwithstanding the underlying reasons for same.

The potential cost to *all* Georgetown Village homeowners with respect to the danger of increased damage to its common elements and, particularly, building roofs, can be demonstrated by understanding that the budget for the *long-term* care of our residential buildings is covered, primarily, by our replacement reserves. For all categories of long-term maintenance, our replacement reserves budget comprises about 20% of our annual operating budget: in excess of \$150,000 per year. About 62% of the annual contributions to our replacement reserves, more than \$93,000, is for our residential buildings, which include in large part, roofs and exterior brick care (referred to in the industry as "tuckpointing"), and patio/balcony restoration. Indeed, between 1995 and 1997, Georgetown Village is replacing, in their entirety, all 19 building roofs, at an estimated final cost of nearly \$250,000.

Extension of Order 96-328 to community associations such as Georgetown Village also would prohibit any regulations or other restrictions which would require placement of antennas in particular places if such restrictions might impair a viewer's ability to receive video programming. *See e.g.*, Paragraph 20. Yet, each building roof has a limited size, and the placement of additional fixtures on our building roofs already is governed by other local building codes. Indeed, certain areas of our roofs are designed for the placement of twelve heat pumps, which serve twelve of the sixteen units in each building -- further limiting the areas where antenna devices may be placed. Moreover, even if acceptable arrangements could be made for installing and maintaining DBSS, MMDS, and TVBS antennas, residents and owners would be left to compete for the right to place such devices in *any* location on the roofs, regardless of whether the device was intended to serve a unit in the building on which it was installed. Thus, for example, a resident of one building might determine that better broadcast reception would be available by placing it on the roof of another building; under the terms of Order 96-328, Georgetown Village would not be permitted to restrict the installation of such antenna devices, regardless of the logistical issues related to wiring, etc.

Another portion of the Georgetown Village common elements negatively impacted by the further expansion of Order 96-328 are its patios and balconies -- limited common elements reserved for the exclusive use of the owners of the units for which they were built. Individual owners may not take any action or do anything on or to patios and balconies which would damage, or otherwise impair their structural integrity. Yet, installation of many, if not most, DBSS, MMDS, and TVBS antennas (including satellite dishes) requires drilling through the exterior brick walls of the building -- a *general* common element -- to run wires from interior portions of the individual unit to the outside antenna system. The responsibility for repairing any damage caused to the exterior portions of our residential buildings from the installation of DBSS, MMDS, and TVBS antennas will be borne, as most such expenses are, by *all* 304 owners. Indeed, since the Order 96-328 prohibits community associations from imposing restrictions which might increase the cost of installation and maintenance of antenna systems, Georgetown Village would have no choice, but to force all its owners to pay simply to enable and facilitate the ability of those owners who might wish to install such systems.

Another area of serious concern to Georgetown Village is the potential unrestricted ability of residents to place antenna devices, including satellite dishes, anywhere on the grounds of our community. The language of Order 96-328 discusses restrictions which would prohibit the placement of such devices on areas which are not under the exclusive control of the owner. To the extent that any further orders would permit placement of antenna devices on limited common elements, while permitting restrictions which take into consideration the issues discussed above, community associations, especially condominiums such as Georgetown Village, must be permitted to prohibit the placement of antenna devices on its grounds. If residents or owners are permitted to install antenna devices *anywhere*, the property maintenance concerns discussed above would escalate to nightmarish proportions, as we would be liable for additional landscaping costs, as well as the liability for damage to such devices which might occur from any number of sources otherwise outside of our control. Not only is there a grave concern that antenna devices might sprout like one meter "mushrooms" about our property, as residents and owners seek the optimum location to provide maximum reception, there is the continuing concern regarding wiring and other required connections. Would we be able to require owners to "fence" in their antennas? Would we be able to require owners to restore landscaping destroyed to install such

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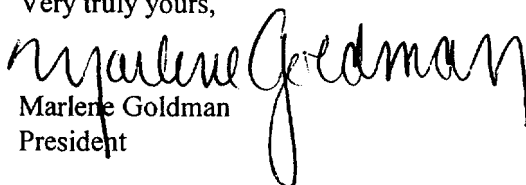
devices as a prerequisite for permission to install? To whom could we pass along the increased landscape costs, as our contractors would have to raise their prices to cover their increased liability for damage when mowing lawns, etc.?

Although Georgetown Village is a member of the Community Associations Institute ("CAI"), and supports its positions in this rulemaking process, we do not support exceptions for community associations offering central reception facilities. Before Georgetown Village was converted to a condominium in 1985, all 304 homes were wired for a master antenna service, connected to a satellite dish located on our property. The service was discontinued when the satellite dish and its connections fell into disrepair, and repair service became unsatisfactory. Our Board of Directors investigated installing a new satellite dish, or discounted rates for large-scale cable television subscriptions. Regardless of the option selected, obtaining either service at a reasonable rate, required the participation of *all* 304 homes, and assumption by the association of the cost as an operational expense, passing it on to our homeowners, increasing their condominium fees between \$15 and \$20 per home, *per month*, regardless of whether the owner was interested in receiving the service; amounting to an increase of 10% of current monthly assessments. With general pressures faced by our condominium (as with most community associations) to keep monthly operational costs and assessments as low as possible, and with the needs to maintain more essential operational and physical maintenance services, such an added cost was considered unacceptable and, therefore, no further action was taken. Even so, several years ago, Georgetown Village permitted the cable television company serving Montgomery County, Maryland, to run underground connections throughout our community. Connections were installed in each building, with the required wiring run through common areas between individual units. Thus, all 304 homes at Georgetown Village are wired for receiving cable television service. However, it is up to the individual resident to arrange for final wiring for connection to the cable service, as well as contracting for such services.

Condominiums such as Georgetown Village, and other similar community associations, must be permitted to restrict and regulate the installation of DBSS, MMDS, and TVBS antennas on any portion of the general, and limited common element, so long as such installation impacts any portion of those elements for which the association, as a whole, is responsible for maintaining. Although concerned with issues of aesthetics, the 304 homeowners of Georgetown Village would be severely and negatively impacted by the extension of Order 96-328 to Section 207 of the Telecommunications Act of 1996. Not only would application of Order 96-328 lead to long-term damage to the physical infrastructure of our property, such damage would be a cost borne not simply by the few residents seeking to install DBSS, MMDS, and TVBS antennas, but by all homeowners in the form of increased operational and long-term costs borne by our association. Certainly, that could not have been the intent of the Congress in its passage of Section 207 of the Telecommunications Act of 1996.

Thank for the opportunity to comment on the proposed additional rules. Please include us on the mailing list in this proceeding.

Very truly yours,


Marlene Goldman
President

cc: Board of Directors, Georgetown Village Condominium
Vanguard Management Associates, Inc.
Community Associations Institute
Washington Metropolitan Chapter Community Associations Institute